



FEDERAL COMMUNICATIONS COMMISSION  
Federal Communications Commission  
Washington, D.C. 20554

MAY 3 1996

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The Honorable Dirk Kempthorne  
United States Senator  
704 Blaine Street, Room 1  
Caldwell, Idaho 83605

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MAY - 9 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Senator Kempthorne:

Thank you for the letter dated April 4, 1996, on behalf of your constituent, Dick Cox, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. Mr. Cox expresses concern regarding the Commission's decision to redesignate the 800 MHz General Category Pool frequencies. Mr. Cox also expresses concern about the proposed use of competitive bidding procedures to award future licenses on these frequencies.

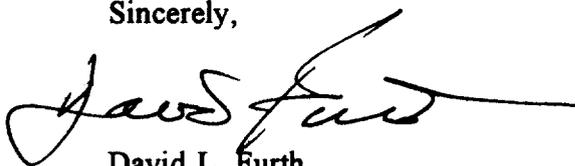
On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the General Category. In the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees using General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. Existing non-SMR licensees on General Category channels will continue to operate under their current authorizations, however, and will be fully protected from interference by new SMR licensees. In addition, the Commission's decision specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. As a result, we anticipate that the First Report and Order will make more spectrum available for licensees such as Mr. Cox, who are currently eligible, and will continue to be eligible, to apply in the Business and Industrial/Land Transportation categories. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses

satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Enclosure

DIRK KEMPTHORNE  
IDAHO

# United States Senate

WASHINGTON, DC 20510-1204

April 4, 1996

Judith L. Harris  
Director  
Federal Communication Commission  
Room 8008  
1919 M. Street, N.W.  
Washington, DC 200554

Dear Judith:

My constituents' inquiries and concerns are very important to me and this matter is referred to you for your appropriate consideration and action.

To assist me in fully responding to my constituent, please send a report to me at the following address: 704 Blaine Street, Room 1, Caldwell, Idaho 83605. The outside envelope only should be marked ATTENTION: Daniel Ramirez.

Thank you for giving this matter your earliest attention and response.

Sincerely,



DIRK KEMPTHORNE  
United States Senate

PLEASE REPLY TO:

- 304 NORTH 8TH ST., #338  
BOISE 83702
- 704 BLAINE STREET, #1  
CALDWELL 83605  
208-455-0260
- 118 NORTH 2ND STREET  
COEUR D'ALENE 83814
- 2538 CHANNING WAY, #240  
IDAHO FALLS 83404
- 618 D STREET, RM. E  
LEWISTON 83501
- 220 EAST 5TH STREET, #105  
MOSCOW 83843
- 250 SOUTH 4TH, #207  
POCATELLO 83201
- 401 2ND STREET NORTH, #108  
TWIN FALLS 83301

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**SPRINKLER  
IRRIGATION SALES**

March 28th 1986

Senator Dirk Kempthorne  
304 North 8th Street Room 338  
Boise, ID 83702

Dear Senator Dirk Kempthorne,

Re: FCC PR Docket No. 93-144, Redesignation of the 800 MHz General Category Pool to a Commercial-only Service and Proposed Implementation of Competitive Bidding Processes.

In the above-referenced proceeding, the Federal Communications Commission has reallocated 150 channels in the 800 MHz band that have been shared jointly by both private and commercial licensees for more than twenty years. The FCC's justification for this aggressive action was simply that the "overwhelming majority" of channels were used for commercial operation. In fact, while there are a significant number of commercial subscriber-based operations, there are also more than 3,400 non-commercial licensees. We happen to be one of the latter who do not use the spectrum to generate business revenues.

Our company sells agricultural irrigation equipment, we also design, install, and maintain agricultural systems. Due to the installation and maintenance portion of our business (which is a large majority) we require immediate contact with personnel out in the field. We accomplish our method of contact by radio.

Now that the FCC has reclassified the band for commercial use, it has, simultaneously, provided itself authority to conduct auctions and has proposed to do so. These actions are extremely predatory to the spectrum rights that were afforded my company. We should retain a fairly reasonable expectation that - as a non-commercial entity operating a radio system in a spectrum band where there is little opportunity for mutually exclusive applications - we would not be subjected to federally forced competitive bidding processes.

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We do not support - nor believe you should support - FCC regulatory actions that would seem to exceed the FCC's auction authority as set forth in the Omnibus Budget Reconciliation Act of 1993. In granting authority to the FCC to award such authorizations by auction, we understood that Congress expressly limited such authority to situations involving mutually exclusive applications. Further, section 309(j)(6)(E) of the 1993 Budget Act directed the FCC to make every effort to avoid mutually exclusive situations by use of engineering solutions, such as frequency coordination. The opportunity to generate revenues was not to be used as justification for ignoring this congressional directive.

We respectfully request that you urge the FCC to reverse its recent redesignation of the 800 MHz General Category Pool. That action alone would preclude the FCC from instituting auction processes in a band that is heavily encumbered by both private and commercial licensees. We are at a loss to understand federal government action that would expose our firm to having to compete for spectrum through auctions when our assigned channels were validly licensed in accordance with existing policy.

Your interest and assistance will be most appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Dick Cox".

Dick Cox  
Manager

cc: Industrial Telecommunications Association, Inc., Attention  
Mark E. Crosby, President 1110 North Glebe Road Suite 500 Arlington,  
Virginia 22201-5720

**Commercial Wireless Division**

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